

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 1 OF 2023

Sandesh Shivaji Jedhe Petitioner

Vs.

Union of India and Ors. Respondents

Mr.Viquar Rajguru a/w Mr.Sadique Ali i/b Mr.Aditya S. Navpute for
the Petitioner

Mrs.A.S.Pai, P.P. for the State

Mr.Ashish Chavan a/w Mr.Zishan Quazi and Mr.Manoj Borkar for
the Respondent Union of India

Mr.Rafique Dada, Sr.Advocate a/w Mr.Mustafa Doctor, Sr.Advocate
a/w Mr.Suhail Nathani a/w Mr.Dinesh Pednekar a/w Mr.Swapnil
Gupte a/w Mr.Hrishekesht Shukla a/w Ms.Shubhangi Khandelwal i/b
M/s.Economic Laws Practice for Respondent no.6

Mr.Abad Ponda, Sr.Advocate a/w Mr.Suhail Nathani a/w
Ms.Shubhangi Khandelwal a/w Ms.Dhruvee Patel i/b M/s.Economic
Laws Practice for Respondent no.7

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : JANUARY 17, 2023

P.C.

1 The Petitioner seeks directions against Respondent nos.4 and
5 to incorporate the offence punishable under Section 304 part II of
the Indian Penal Code, 1860 instead of section 304-A of the Indian
Penal Code, 1860 in the First Information Report bearing O214

dated 05.11.2022 registered by Kasa Police Station, Palghar against Respondent no.7. He further seeks directions to incorporate section 109 read with section 304 part II of the Indian Penal Code, 1860 in the said FIR and further directions.

2 The learned Counsel for the Petitioner submits that the Respondent no.7 was guilty of dangerous driving which led to the death of two co-passengers on or about 04.09.2022. He would further submit that the Petitioner has filed the present Public Interest Litigation on the basis of information received. The Petitioner is espousing the cause of death caused by the dangerous driving by Respondent no.7. The learned Counsel submits that the Public Interest Litigation is maintainable. To substantiate his contention, he relies on the judgment in the case of ***Subramany Swamy and Ors. vs. Raju***¹. The learned Counsel submits that some of the averments made in the petition were based on the press reports and some on confidential information.

3 According to the learned Counsel for the Petitioner, the law enforcement machinery is adopting dual standards; one for influential persons and another for poverty stricken persons.

4 Mr.Rafiq Dada, the learned Senior Advocate for Respondent

1 (2013) 10 SCC 465

no.6 submits that the present PIL is not maintainable and deserves to be dismissed with costs. The learned Senior Advocate relies upon the judgment of the *Sakiri Vasu vs. State of Uttar Pradesh and Others*² and another judgment of the Apex Court in the case of *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and Others*³.

5 Mr.Ponda, the learned Senior Advocate for Respondent no.7 submits that the forensic report is placed on record which belies the contention of the Petitioner. He would submit that the forensic report clearly suggests that there was nil Alcohol present. The learned Senior Counsel relies upon the judgment of the Apex Court in the case of *Iffco Tokio General Insurance Company Limited vs. Pearl Beverages Limited*⁴.

6 We have considered the submissions. It appears that the Petitioner, without substantive knowledge of the facts, has presented this PIL. At page 33 clause (b) it is stated that the blood samples of Respondent no.7 were not collected as soon as possible to check if she was in an intoxicated state or not. Upon being confronted, the learned Counsel for the Petitioner accedes to the fact that the said statement may not be in tune with the actual facts on record.

2 (2008) 2 SCC 409

3 (2016) 6 SCC 277

4 (2021) 7 SCC 704

7 When the petition is being filed, the pleadings are on oath. The pleadings have to be responsible and the same cannot be casual or wanton pleadings. The courts rely upon the pleadings. The pleadings relating to drunk driving of Respondent no.7 and about she allegedly drinking alcohol on a night prior to the incident till 11 p.m. on 03.09.2022 at Cafe Panama, are not supported by any evidence on record. When the petition is to be filed in the court, the facts are to be substantiated, more particularly, when the PIL is being filed.

8 The Petitioner is not in know of the facts personally nor he is remotely concerned with the incident. In such a case, the present PIL ought not to have been filed and that to on the basis of such loose statements. The charges are to be framed by the Magistrate. The charge sheet is already filed before the Magistrate.

9 We do not find any public interest involved in the present PIL.

10 The Apex Court in the case of *Sudhir Bhaskarrao Tambe* (Supra) observed thus:

“2. This Court has held in *Sakiri Vasu v. State of U.P. & Others*, reported in AIR 2008 SC 907, that if a person has a grievance that his F.I.R. has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the

Constitution of India, but to approach the concerned Magistrate under Section 156(3), Cr.P.C. If such an application under Section 156(3), Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct the F.I.R. to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the Investigating Officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu's case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the concerned Magistrate under Section 156(3), Cr.P.C. and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

11 We find the present PIL to be without any substance and merit and without involving public cause.

12 In light of that, PIL is dismissed with costs. Costs in the cause.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)